

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**B.B., Appellant**

**and**

**DEPARTMENT OF LABOR, WAGE & HOUR  
DIVISION, Montgomery, AL, Employer**

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**Docket No. 08-2454  
Issued: June 15, 2009**

*Appearances:*

*John S. Bennett, for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 5, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 12, 2008 regarding an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether the Office properly determined that an overpayment of \$13,738.95 was created from December 17, 2000 to January 21, 2006 based on incorrect deduction of life insurance premiums; and (2) whether the Office properly denied waiver of the overpayment.

**FACTUAL HISTORY**

The case has previously been before the Board. By decision dated September 5, 2007, the Board reversed a January 19, 2007 Office decision terminating compensation benefits.<sup>1</sup> In a

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<sup>1</sup> Docket No. 07-1043 (issued September 5, 2007).

decision dated January 7, 2009, the Board reversed a March 7, 2008 termination decision.<sup>2</sup> The history of the case as provided in the Board's prior decisions is incorporated herein by reference.

In a December 17, 2000 letter, the Office of Personnel Management (OPM) indicated that civil service annuity payments were terminated December 16, 2000. OPM advised the Office to withhold premiums for optional life insurance and postretirement basic life insurance with no reduction. The record indicates that appellant began receiving compensation with premiums deducted for optional life insurance, with no deductions for basic life insurance and postretirement life insurance. As of January 22, 2006, the Office began deducting premiums for basic life insurance, optional life insurance, and postretirement life insurance.

By letter dated March 1, 2006, the Office advised appellant of a preliminary determination that an overpayment of \$4,775.76 was created from a failure to properly deduct life insurance premiums from December 17, 2000 to January 21, 2006. Its calculations stated that \$5,735.09 should have been deducted for postretirement basic life insurance, and \$2,617.59 in optional life insurance. According to the Office, only \$3,576.92 had been deducted for optional life insurance, resulting in a \$4,774.76 overpayment of compensation.

Appellant submitted an overpayment recovery questionnaire dated May 10, 2006. By decision dated June 21, 2006, the Office granted waiver of the overpayment.

By letter dated March 17, 2008, the Office notified appellant of a preliminary determination that an overpayment of \$13,738.95 was created from December 17, 2000 to January 21, 2006. Its calculations indicated that it should have deducted \$1,294.79 in basic life insurance premiums and \$12,444.16 in postretirement life insurance premiums. Appellant was advised that she was found not at fault in creating the overpayment, and she must submit financial information pursuant to the enclosed overpayment recovery questionnaire (OWCP-20) if she was requesting waiver of the overpayment.

On March 31, 2008 the Office received additional evidence, including a March 25, 2008 OWCP-20. In a decision dated August 12, 2008, it finalized its preliminary determination of a \$13,738.95 overpayment of compensation. The Office denied waiver, stating: "No response has been received to the preliminary decision. The claimant has not contested the finding and it should be finalized as correct for the reasons set forth in the preliminary decision."

### **LEGAL PRECEDENT -- ISSUE 1**

Under the Federal Employees' Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one

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<sup>2</sup> Docket No. 08-1372 (issued January 7, 2009).

or more of the options.<sup>3</sup> The coverage for basic life is effective unless waived<sup>4</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>5</sup>

The Federal Employees' Compensation Act<sup>6</sup> and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain circumstances<sup>7</sup> and may also retain the optional life insurance.<sup>8</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationeer" status.<sup>9</sup> If the compensationeer chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationeer was an employee will be used to withhold premiums from his or her compensation payments.<sup>10</sup> Thus while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The evidence establishes that the Office should have been deducting premiums for postretirement basic life insurance (PRBLI) benefits since December 17, 2000, pursuant to the instructions from OPM. The Office did not begin deducting postretirement basic life until January 22, 2006, and therefore an overpayment of compensation was created.

As to the amount of the overpayment, the case must be remanded for further development. The Office found in its March 17, 2008 preliminary determination that \$12,444.16 should have been deducted for PRBLI premiums. The Board notes, however, that a May 1, 2006 preliminary determination had found that \$5,735.09 should have been deducted for PRBLI premiums from December 17, 2000 to January 21, 2006. No explanation was offered for the significant difference in the two calculations. In addition, the 2006 overpayment determination did not include premiums of \$1,294.79 in basic life insurance premiums as an overpayment, while the 2008 calculations included this figure in the overpayment.

The March 17, 2008 preliminary determination and the August 12, 2008 final decision do not address the findings in the 2006 overpayment determination and clarify why the current calculations are correct and in accord with OPM and Office regulations. Appellant is entitled to

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<sup>3</sup> 5 C.F.R. § 870.201.

<sup>4</sup> *Id.* at § 870.204(a).

<sup>5</sup> *Id.* at § 870.401(a).

<sup>6</sup> 5 U.S.C. §§ 8101-1893.

<sup>7</sup> 5 C.F.R. § 870.701, subpart G.

<sup>8</sup> *Id.* at § 871.201, subpart B; 8702.201, subpart B; 873.203, subpart B.

<sup>9</sup> *Id.* at § 870.501.

<sup>10</sup> *Id.* at § 872.410, subpart D.

<sup>11</sup> *Scherri L. Stanley*, 53 ECAB 433 (2002).

a decision with proper findings of fact and a statement of reasons.<sup>12</sup> On remand the Office should clearly explain its calculations as to the amount of the overpayment and explain the disparity between the 2008 and 2006 overpayment calculations.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(b) of the Act provides: “Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.”<sup>13</sup> Since the Office found appellant to be without fault in the creation of the overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

According to section 10.436, recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary “needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses,” and, also, if the beneficiary’s assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics.<sup>14</sup> For waiver under the “defeat the purpose of the Act” standard, appellant must show that he needs substantially all of his current income to meet current ordinary and necessary living expenses, and that his assets do not exceed the resource base.<sup>15</sup> The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

With respect to waiver, the Office found that appellant did not submit any financial information relevant to the issue. The August 12, 2008 decision stated that appellant had submitted “no response” to the preliminary determination. The record indicates, however, that on March 31, 2008 appellant submitted a new OWCP-20 in response to the March 17, 2008 preliminary determination. It is well established that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its final decision should be considered by the Office.<sup>17</sup> The case will be remanded to the Office to properly consider the relevant evidence

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<sup>12</sup> See 20 C.F.R. § 10.126.

<sup>13</sup> 5 U.S.C. § 8129(b).

<sup>14</sup> Office procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

<sup>15</sup> See *Robert E. Wenzholz*, 38 ECAB 311 (1986).

<sup>16</sup> 20 C.F.R. § 10.438.

<sup>17</sup> *M.M.*, 59 ECAB \_\_\_\_ (Docket No. 07-2103, issued August 26, 2008); *William A. Couch*, 41 ECAB 548 (1990).

on the issue. After such further development as the Office deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds the case must be remanded to the Office for a decision that properly explains its calculations regarding the amount to the overpayment and considers the relevant evidence regarding waiver of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 12, 2008 is affirmed with respect to fact of overpayment, and set aside and remanded with respect to amount and waiver of the overpayment.

Issued: June 15, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board